

## REMARKS

This Response is submitted in response to the Office Action mailed on December 7, 2006. Pursuant to this response, Claims 44, 49, 50, and 65 have been amended. The amendments do not add new matter. Applicants note for the record that they previously appealed a rejection of the claims on substantially similar references. The Patent Office withdrew the rejection in view of Appellants' Appeal Brief. However, for all intents and purposes, with respect to all but Claims 62-64, the Patent Office has merely added an additional reference, U.S. Patent No. 6,882,900 (*Terranova*) to the previous rejection. Applicants respectfully submit that the rejections are not proper for the reasons set forth below.

Claims 44-68, 76, and 102-111 stand rejected under 35 U.S.C. § 103 as being unpatentable over *Bustos* in view of *Walter* and further in view of *Terranova*. The *Bustos* and *Walter* rejection was previously tendered by the Patent Office in rejecting Claims 44, 48-50, 56, 65, 67, 76, and 102-111. After Applicants' appeal of that rejection, the Patent Office withdrew same.

Applicants have addressed below the rejections with reference to the independent claims. The dependent claims are allowable for at least the same reasons as the independent claims from which they depend.

Pursuant to the instant Response, Applicants have amended Claim 44. The cited references alone, or in combination, fail to disclose or suggest the claim, especially as amended. Independent Claim 44, for example, requires allowing the consumer to select a product from a dispensing device located in juxtaposition to the automated checkout. The product is not only dispensed at a location in juxtaposition to the automated checkout, it is also stored there.

*Bustos* fails to disclose or suggest this feature and in fact teaches away from this concept in that it requires remote storage of the products away from the actual dispenser. See, *Bustos*, column 3, lines 43-65.

Regarding the Patent Office's statement that "remote" and "proximate" are broad terms, Applicants submit that this is inapposite. They are antonyms. The disclosure of *Bustos* relates to storing products remote from where they are dispensed. "Remote" is the word used by *Bustos*. It is the exact opposite of "proximate" and "juxtaposition." For the Patent Office to disregard this distinction is to effectively destroy the ability of the Applicants to even attempt to claim their

invention. Applicants respectfully submit that the Patent Office's justification for the rejection demonstrates that it is not proper.

Claim 44 also requires the step of automatically adding a cost of the product to the cost associated with the scanned items. Neither *Bustos* nor *Walter* discloses this feature. Indeed, *Bustos* fails to disclose or even suggest a scanning device or the use of one in conjunction with its devices. *Terranova* has been added by the Patent Office as teaching adding the cost of the dispensed product to the total cost. However, *Terranova* also stores the product remotely, thus teaching away from the claimed invention. "The present invention uses transponders to appropriately associate orders placed at different locations with the appropriate customer at a common pick-up location." *Terranova*, col. 11, lines 64-67. Thus, the cited references not only fail to disclose at least one claimed element even when combined, they teach away from same. For these reasons, Applicants submit the obviousness rejection of Claim 44 is improper.

With respect to independent Claim 48, the cited references alone, or in combination, fail to disclose or suggest the present claim. Independent Claim 48 requires, in part, a touch screen coupled to the dispensing device. *Bustos* fails to disclose or suggest any touch screen associated with a dispensing device. *Walter* fails to disclose any kind of product dispensing device. *Terranova* does not disclose a touch screen and instead discloses a keypad. See col. 7, lines 23-29, cited by the Office Action. "The graphics display 100 will have an associated keypad 102 adjacent to the display or integrated with the display to provide a touch interface..." Applicants do not believe that this is a touch screen that can change and provide a variety of messages and prompts. Claim 48 also requires the element of storing the dispensed product at the point of purchase, which is taught away from by *Bustos* and is not disclosed or suggested by *Walter*. *Terranova* does not remedy this defect and, if anything, teaches away from this claim element. For these reasons, the obviousness rejection of Claim 48 is improper.

The cited references alone, or in combination, fail to disclose or suggest independent Claim 49. In addition to the automatically adding the cost of the product (not disclosed in *Bustos* or *Walter*), independent Claim 49 requires prompting the consumer to purchase a product from the dispensing device. Neither *Bustos* nor *Walter* discloses or suggests this feature. With respect to *Walter*, it should be noted that to the extent it prompts the consumer to purchase any product, that product is not located at the point of purchase. Indeed, *Walter* discloses the problem Appellants' claimed invention attempts to overcome, namely the fact that point of purchase

products are not provided at automated checkout counters. Likewise, *Terranova*, as well as *Bustos* and *Walter* fail to disclose or suggest storing the product at the point of purchase. For these reasons, the obviousness rejection of Claim 49 is improper.

Independent Claim 50 requires, in part, providing a product at the point of purchase and prompting the consumer that other products are available at the point of purchase. These elements are neither disclosed nor suggested by *Bustos* or *Walter*. In fact, *Bustos* or *Walter* fail to disclose or suggest any prompting of a consumer to purchase products from a dispensing device. The Patent Office states that *Terranova* discloses this feature, yet the disclosure cited by the Patent Office merely states that the display can "provide advertising, merchandising and multimedia presentations to a customer in addition to basic transaction functions." (Col. 8, line 67 – col. 9, line 2). Furthermore, this claim now requires storing the point of purchase product at the point of purchase. *Bustos* and *Walter* fail to disclose or suggest, and indeed teach away from, storing the product at the point of purchase. For these reasons, the obviousness rejection of Claim 50 is improper.

Independent Claim 56 requires, in part, stocking a plurality of different products at the point of purchase. This feature is neither disclosed nor suggested by *Bustos*, *Walter*, or *Terranova* and is actually taught away from in *Bustos* and *Terranova*. Additionally, for example, the feature of automatically prompting the consumer that the products are available at the point of purchase is not even addressed by the Office Action. For these reasons, the obviousness rejection of Claim 56 is improper.

Independent Claim 65 requires, in part, prompting a consumer to purchase a point of purchase product which is stored in the dispenser. *Bustos*, *Walter*, and *Terranova* fail to disclose or suggest this feature. As discussed previously, with respect to *Walter* and *Terranova*, it should be noted that to the extent it prompts the consumer to purchase any product, that product is not located at the point of purchase. Thus, for at least this reason, the obviousness rejection of Claim 65 is improper.

Independent Claim 76 requires, in part, storing point of purchase products at the point of purchase location. This feature is neither disclosed nor suggested by *Bustos*, *Terranova*, or *Walter* and is actually taught away from in *Bustos* and *Terranova*. For at least these reasons, the obviousness rejection of Claim 76 is improper.

Independent Claim 102 requires, in part, allowing the consumer to select, by touching the display, a product from a dispensing device that stores and dispenses the product. *Bustos* fails to disclose or suggest any touch display associated with a dispensing device. *Terranova* appears to use a keypad, not touch screen. (See col. 8, line 64). *Walter* fails to disclose any kind of product dispensing device. In addition, this claim requires that the product to be dispensed is stored at a location that is in juxtaposition to an area that a consumer occupies as he operates the automated checkout. The references fail to disclose or suggest this claimed element. For these reasons, the obviousness rejection of Claim 102 is improper.

Independent Claim 106 requires, in part, providing a screen that has a dynamic display capable of displaying an advertisement for at least one of a plurality of point of purchase products. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest any dynamic display advertisements associated with the screen and products of a point of purchase device. Claim 106 also includes allowing the consumer to purchase the point of purchase product by touching a screen. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest any touch screen associated with a point of purchase device. In addition, this claim requires storing the products in a dispenser at the checkout station. For these reasons, the obviousness rejection of Claim 106 is improper.

Independent Claim 107 requires, in part, prompting a consumer through the use of a display to purchase a plurality of different products from a dispensing device. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest any prompting by a dispensing device. Claim 107 also includes allowing the consumer to select one of the plurality of product from a dispensing device by touching a portion of a checkout station. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest this feature. For at least these reasons, the obviousness rejection of Claim 107 is improper.

Independent Claim 108 requires, in part, prompting a consumer to purchase chewing gum from a dispenser. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest any prompting by a dispenser or even any chewing gum product dispensed by a dispenser. Claim 108 also includes dispensing the chewing gum product to the consumer in response to the consumer touching a screen. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest this feature. For at least these reasons, the obviousness rejection of Claim 108 is improper.

Independent Claim 109 requires, in part, stocking a plurality of different confectionary products at the point of purchase. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest this feature, and *Bustos* and *Terranova* actually teach away from this feature. Claim 109 requires automatic prompting a consumer, through the use of a dynamic display, to purchase the plurality of confectionary products from a dispensing device. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest any automatic prompting by a dispensing device. Claim 109 also includes allowing the consumer to select at least one of the confectionary products from a dispensing device by touching the dynamic display. For at least these reasons, the obviousness rejection of Claim 109 is improper.

Independent Claim 110 requires, in part, stocking confectionary and non-consumable products in a single dispensing device. *Bustos*, *Terranova*, and *Walter* fail to disclose or even suggest this feature. Claim 110 requires allowing a consumer to purchase the confectionary product or non-consumable product from the dispensing device without the need of a cashier. *Bustos*, *Terranova*, and *Walter* fail to disclose or suggest any such automatic confectionary product and non-consumable product dispensing device. For at least these reasons, the obviousness rejection of Claim 110 is improper.

Independent Claim 111 requires, in part, providing a means for prompting the purchase of point of purchase products. These elements are neither disclosed nor suggested by *Terranova*, *Bustos*, or *Walter*. In fact, *Terranova*, *Bustos*, or *Walter* fail to disclose or suggest any prompting means of a consumer to purchase products from a dispensing device. For these reasons, the obviousness rejection of Claim 111 is improper.

Accordingly, Applicants respectfully request that the obviousness rejections be withdrawn.

Claims 62-64 stand rejected under *Terranova*. The rationale given by the Patent Office is "Regarding obtaining a fee paid from a supplier of the product in exchange for allowing the product to be dispensed, note that it is considered to be inherent that the owner of *Terranova's* gas station would obtain a fee in the form of profits for selling a particular item through *Terranova's* system." This rationale, it is respectfully submitted, ignores the claim limitation.

Specifically, the claim requires "obtaining a fee paid from a supplier of the product in exchange for allowing the product to be dispensed from the point of purchase device." This has nothing to do with any profits for selling a particular item. Rather, a *quid pro quo* for some third

party for putting the product in the point of purchase device is providing a fee. This is a method for funding the point of purchase device in a retail outlet. This is not disclosed nor suggested nor inherent in *Terranova*. Indeed, the Patent Office's rationale for the rejection demonstrates the rejection is improper. Therefore, Claims 62 (and 63-64 that depend therefrom) are allowable and the rejection should be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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